

Study J-1400

January 11, 2001

Memorandum 2001-5

Statutes Made Obsolete by Trial Court Restructuring: Overview

BACKGROUND

Government Code Section 71674 directs the Law Revision Commission to recommend the repeal of statutes made obsolete by trial court funding reform, trial court unification, and trial court employment reform. The directive was enacted during the 2000 legislative session as part of the Trial Court Employment Protection and Governance Act (TCEPAGA). TCEPAGA became operative January 1, 2001.

Gov't Code § 71674. Obsolete provisions resulting from trial court restructuring

71674. The California Law Revision Commission shall determine whether any provisions of law are obsolete as a result of the enactment of this chapter, the enactment of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Chapter 850 of the Statutes of 1997), or the implementation of trial court unification, and shall recommend to the Legislature any amendments to remove those obsolete provisions. The commission shall report its recommendations to the Legislature, including any proposed statutory changes, on or before January 1, 2002.

The January 1, 2002, due date allows the Commission one year to complete the task.

The restructuring of the trial court system that occurred during the late 1990's pursuant to these enactments was monumental. It included (1) the state's assumption of the trial court funding obligation, (2) unification of the justice courts, municipal courts, and superior courts, and (3) vesting of control of trial court employment in the courts.

These enactments override a massive statutory structure that is now at odds with the governing law. In a memorandum analyzing existing court staffing statutes for the Task Force on Trial Court Employees, Professor Kelso remarks:

The legal status of the existing court staffing statutes is confused. Over the course of the last decade, the Legislature and

the Judicial Council have enacted far-reaching statutes and rules dealing with trial court coordination, trial court unification, trial court funding, and trial court employment relations. These statutes and rules have clearly had a substantial impact upon trial court personnel matters, but neither the Legislature nor the Judicial Council has attempted to reconcile these statutes and rules with the pre-existing trial court staffing statutes. The result is a confused and conflicting mass of provisions.

The only systematic effort that has been made to conform the existing statutes to the new law is the Law Revision Commission's overhaul of general provisions in the codes to reflect trial court unification. (County-specific statutes, dealing with individual municipal courts in the various counties, were not addressed, pending resolution of employment issues.) That revision was enacted in 1998. However, even that effort is incomplete, since not all counties had unified at the time, and many general statutes still reflect a dual court system.

The effort to conform the statutes to existing law will be a huge task. At a minimum, every provision of Title 8 of the Government Code, relating to the organization and government of the courts, must be looked at and evaluated. That body of statutory material alone occupies several volumes of the annotated codes, comprised of somewhere in the vicinity of 3,000 statute sections. For a schematic outline of Title 8 of the Government Code, see the Exhibit to this memorandum. In addition, other related or affected provisions of the Government Code and other codes, particularly in the Code of Civil Procedure and Penal Code, must be sought out and examined.

TRIAL COURT RESTRUCTURING

It will be useful to review the major developments that have occurred in the trial court restructuring process. The policy set by the Legislature in these developments will inform the effort to conform conflicting statutes.

Trial Court Funding

The major event in trial court funding occurred with the enactment of the Trial Court Funding Act of 1997. That legislation took effect on January 1, 1998, and consolidated funding of the trial courts at the state level.

Under the new system, the state has assumed full responsibility for funding trial court operations. The Judicial Council annually submits a trial court budget to the Governor for inclusion in the state budget, that meets the needs of all trial

courts. The Judicial Council administers the budgetary allotment by making payments to the courts.

The counties annually make a contribution to the state, based on fiscal year 1994-95 levels, with a mechanism for adjustment to correct inequities. The counties are required to continue funding court facilities and court-related costs not considered part of “court operations”, such as indigent defense, pretrial release, and probation costs. Growth in revenues from fines is split between the counties and the state’s Trial Court Improvement Fund.

The funding reform also contemplates a decentralized system of trial court management, and requires the Judicial Council to adopt rules of court to ensure it.

To the extent existing statutes are still inconsistent with this scheme, they will need to be reformed. One problem area will be statutes that vest some control over court operations in county boards of supervisors. On the surface, these statutes appear to be inconsistent with the concepts of state control of trial court funding and court control of court operations. However, county control of some of these matters may still be appropriate. It will be necessary to treat these on a section by section basis.

Trial Court Unification

The trial court unification statutes are well in hand. Legislation recommended by the Commission has already been enacted to repeal or amend all statutes in the codes to make them functional in a unified court regime. See 1998 Cal. Stat. ch. 931 (SB 2139); 1999 Cal. Stat. ch. 344 (SB 210); *Trial Court Unification: Revision of Codes*, 28 Cal. L. Revision Comm’n Reports 51 (1998).

There are substantive revisions that should be made to the codes to make procedures more efficient in a unified regime. The Law Revision Commission and the Judicial Council are actively engaged in projects to accomplish this. See Gov’t Code § 70219 (Judicial Council and Law Revision Commission studies and recommendations).

There are two significant chores remaining in the wake of unification. The first is to cleanse the general statutes of remnants relating to municipal courts. This can be done because we anticipate that the one county that has not yet unified — Kings — should do so shortly. The way has been cleared by federal preclearance of Kings County unification under the Voting Rights Act.

The second chore is to clean out of the codes the various county-specific statutes relating to individual municipal courts. To a large extent, this will involve eliminating superseded employment statutes for the courts. This is discussed in more detail immediately below.

Trial Court Employment Protection and Governance

TCEPAGA establishes the basis for a new personnel system for the trial court employees of California. See Gov't Code §§ 71600-71674. Under the act, trial court employees are those functionaries of the court who are both (1) paid from the court's budget and (2) subject to the court's control through hiring, supervision, discipline, and termination. The act may cover some subordinate judicial officers, but does not cover temporary employees hired through agencies, jurors, independent contractors, sheriffs, or judges. Gov't Code § 71601.

Under the act, trial court employees become employees of the court, and not of the state or of the county. The employees may be considered county employees for the purpose of certain benefits. The local court is given control over budget and personnel decisions.

The act maintains employees' current classifications and salaries, and current levels of benefits. It provides discipline for cause and due process hearing procedures as part of the employment protection system. It establishes a personnel system based on merit for purposes of employment, selection, and advancement. It does not alter the means by which memoranda of understanding and personnel policies, procedures, and plans are modified.

More than half of Title 8 of the Government Code (organization and governance of courts) is devoted to detailed statutes governing employment in every municipal court (or former municipal court). Presumptively, all of these statutes can be cleaned out of the code because the municipal courts no longer exist. Moreover, most of the provisions need not be recycled as Superior Court provisions because they are largely superseded by TCEPAGA and implementing agreements in each county.

However, there may be some statutes that need to be continued as Superior Court statutes. Particularly difficult to deal with will be the statutes governing court reporters, since there is no consistency from county to county as to whether the court reporters are employees or independent contractors, or as to the basis of their compensation. Whether the superior court and municipal court statutes

governing court reporters in a particular county can be harmonized remains to be seen.

In addition, we may want to enact a saving clause that preserves the substance of the former municipal court provisions to the extent incorporated by existing law. See, e.g., Gov't Code § 71623 (preserving "existing salary rates" of trial court employees, subject to subsequent modification pursuant to a memorandum of understanding). Comparable provisions may be necessary where retirement benefits are based on a percentage of a statutory salary. Likewise, repeal of specific employment statutes should not be read to overturn existing memoranda of understanding based on them, and a saving clause to that effect should be included with any repealer.

The statutes governing superior court employment are not as voluminous as those governing municipal court employment. That is because the California Constitution provides that the Legislature may "provide for" superior court employees but must "prescribe" the number, qualifications, and compensation of municipal court employees. Compare Cal. Const. Art. VI § 4 (superior court) with § 5 (municipal court).

However, the fact that there are fewer superior court statutes will not make them any easier to deal with. We understand that disagreements among interested parties as to disposition of the superior court statutes led to referral of this matter to the Law Revision Commission.

Trial Court Facilities

An unresolved area in the restructuring of the trial courts relates to trial court facilities. The Legislature has established a Task Force on Court Facilities. Gov't Code § 77650. The task force is charged with identifying needs related to trial and appellate court facilities, and options and recommendations for funding court facility maintenance, improvements, and expansion, including specific responsibilities of each entity of government. The final report of the task force is due July 1, 2001.

Because the policies in this area have yet to be determined, and the Legislature has yet to act, we will necessarily sidestep any issues we come across relating to trial court facilities. That includes issues we have previously identified relating to superior court sessions.

PLAN OF WORK

Although the task ahead of us is daunting, at least the bulk of the work will fall on the staff rather than on the Commission. That is because this is a nonsubstantive project. The Legislature has already restructured the trial court system, and has now asked to Commission to clean out the conflicting, nonconforming statutes.

This will require the staff to review the body of statutes for conformity with legislative policy. It will also require a county by county review, since the statutes governing the court and employment structure of each county are tailored to that county. Much of the staff work involved, apart from examining the statutes, will be devoted to corresponding with court and personnel representatives in each county, with the Judicial Council, and with other interested and affected organizations to make sure they are in accord with our assessment. Where there is a disagreement, the Commission will need to resolve the disagreement.

We anticipate that, despite the magnitude of and short time frame for this project, we will follow the standard Commission procedure. We will start with public meetings at which the Commission sets policy and direction, we will develop drafts for one or more tentative recommendations, we will circulate the tentative recommendations for comment, and make whatever revisions in the recommendations appear necessary before presenting the finished product to the Legislature. If it turns out that this procedure cannot be accomplished in the time allotted, we will need to revisit the process.

One process issue relates to the sheer volume of paperwork involved. The staff has compiled an electronic version of Government Code Title 8 to work with. We have had to break it into a number of segments in order to make it manageable. The printed out version of that title alone, unannotated, in 10 point type, occupies in excess of 650 pages. The logistics and expense of getting the material to interested persons (and to the Commission) for review are daunting. We intend to make an effort to do as much electronically as we can. Nonetheless, the size of the files involved may make it difficult to transmit some of the material even electronically.

This project could completely swallow all staff resources, if we allow it to. That would in effect shelve all other projects and put the Commission out of business for a year. We will not allow this to happen, but it may be necessary to

cut back on the Commission's ordinarily ambitious agenda during the coming year in light of the drain on staff resources.

In order to impose some semblance of order on this project, the staff proposes to divide it topically. At the outset we see the following discrete elements:

(1) Judges.

(2) Subordinate judicial officers.

(3) Court reporters.

(4) Sheriffs and marshals.

(5) County-specific municipal court statutes.

(6) General municipal court statutes.

(7) County-specific superior court statutes.

(8) California Constitution.

(9) General statutes in the Government Code and other codes (conform to funding, unification, and employment policies).

(10) Judicial districts.

(11) Trial court unification transitional provisions.

This plan may be changed or topics further subdivided as we get more into the project.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

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